

**UNITED STATES COURT OF APPEALS
For The
SECOND CIRCUIT**

**At a Stated Term of the United States Court of Appeals for the Second Circuit,
held at the Thurgood Marshall United States Courthouse at Foley Square, in the
City of New York, on the 16th day of November, two thousand and four,**

PRESENT: Hon. John M. Walker, Jr., *Chief Judge*
Hon. Dennis Jacobs
Hon. Guido Calabresi
Hon. José A. Cabranes
Hon. Chester J. Straub
Hon. Rosemary S. Pooler
Hon. Robert D. Sack
Hon. Sonia Sotomayor
Hon. Robert A. Katzmann
Hon. Barrington D. Parker, Jr.
Hon. Reena Raggi
Hon. Richard C. Wesley
Hon. Peter W. Hall

IT IS HEREBY ORDERED, that the Local Rules of the United States Court of Appeals for the Second Circuit are hereby amended on an interim basis by: (1) the adoption of Interim Local Rule 0.14 (b), which replaces the current Local Rule 0.14(b); (2) the adoption of Interim Local Rule 35, which replaces the current Local Rule 35; (3) the adoption of Interim Local Rule 40, which replaces the current Local Rule 40; and (4) the adoption of Interim Rule 46(a), which replaces the current Local Rule 46(a) . The period for public comment on these rules extends to December 17, 2004, following which permanent adoption will be considered. Anyone wishing to comment should do so, in writing, to the Clerk of Court, 40 Foley Square, Room 1802, New York, NY, 10007.

The text of the interim rules follows. Please note that the amendments to the rules are underlined. Those portions of the rules which have been deleted are indicated by a ~~strikeover~~.

These interim Local Rules are immediately effective.

Local Rule 0.14(b)

Local Rule 0.14. Quorum

- (a) Two judges shall constitute a quorum. If, at any time, a quorum does not attend on any day appointed for holding a session of the court, any

judge who does attend or, in the absence of any judge, the clerk may adjourn the court for such time as may be appropriate. Any judge attending when less than a quorum is present or at any time when the court is in recess may make any necessary procedural order touching any suit or proceeding preparatory to hearing or decision of the merits. (See Part 2, Local Rule 27(f).).

- (b) Unless directed otherwise, a panel of the court shall consist of three judges. If a judge of a panel of the court ~~which has heard argument or taken under submission any appeal, petition or motion~~ shall cease to be unable to continue with the consideration of any such matter by reason of ~~on~~ recusal, death, illness, resignation, ~~or incapacity, or other reason, or shall be relieved of such consideration at the judge's request,~~ the two remaining judges will determine that matter if they reach ~~are in~~ agreement and neither requests the designation of a third judge. If they do not reach ~~are not in~~ agreement or either requests such a designation, ~~the Chief Judge will designate~~ another circuit judge will be designated by the Clerk to sit in place of the judge who has ~~become unable to continue or who has been relieved~~. The parties shall be advised ~~Chief Judge shall advise the parties~~ of such designation, but no additional ~~further~~ argument will be had or briefs received unless otherwise ordered.

Local Rule 35

Local Rule 35. En Banc Procedure

- (a) Copy of Opinion or Summary Order Required.

Each ~~suggestion~~ petition for rehearing ~~in en~~ en banc shall include a copy of the opinion or summary order to which the ~~suggestion~~ petition relates, unless the opinion or summary order is included in a petition for panel rehearing that has been combined with the ~~suggestion~~ petition for rehearing ~~in en~~ en banc.

- (b) Judges Eligible to Request an En Banc Poll.

Any Judge of the Court in regular active service and any senior judge who is a member of the panel is eligible to request a poll of the judges in regular active service to determine whether a hearing or rehearing en banc should be ordered (see 28 U.S.C. § 46(c)).

- (c) Determination of Majority for Ordering ~~In~~ En Banc Consideration.

Neither vacancies nor disqualified judges shall be counted in determining the base on which “a majority of the circuit judges of the circuit who are in regular active service” shall be calculated, pursuant to 28 U.S.C. § 46(c), for purposes of ordering a hearing or rehearing ~~in~~ en banc.

(d) Procedure After Amendment of Court Ruling.

If a panel opinion or summary order is amended, a petition for rehearing en banc, or an amended petition, may be filed within the time specified by F.R.A.P. Rule 35(c), counted from the date of the entry of the amendment. A petition for rehearing en banc filed prior to amendment of the court's ruling will continue to be effective and need not be amended.

Local Rule 40

Local Rule 40. Panel Rehearing Procedure

(a) Copy of Opinion or Summary Order Required.

Each petition for panel rehearing shall include a copy of the opinion or summary order to which the petition relates.

(b) Procedure After Amendment of Court Ruling.

If a panel opinion or summary order is amended, a petition for panel rehearing, or an amended petition, may be filed within the times specified by F.R.A.P. Rule 40(a)(1), counted from the date of the entry of the amendment. A petition for panel rehearing filed prior to amendment of the court's ruling will continue to be effective and need not be amended.

(c) Sanctions.

If a petition for rehearing ~~be~~ is found to be wholly without merit, vexatious, and for delay, the court may tax a sum not exceeding \$250 against petitioner in favor of the petitioner's adversary, to be collected with the costs of the case.

Local Rule 46(a)

Local Rule 46. Attorneys

- (a) An applicant shall file with the clerk of the Court of Appeals, in addition to the material required by F.R.A.P. Rule 46, a certificate in writing on a form approved by the court that the applicant has: read and is familiar with the Federal Rules of Appellate Procedure (F.R.A.P.) and the local rules of this court.
- ~~1. Argued in either State or Federal appellate courts at least three appeals of a substantive nature. The argument of an appeal in a Moot Court program conducted by a law school recognized by the American Bar Association shall be deemed the equivalent of an argument in an appellate court;~~
 - ~~2. observed the argument of two appeals in this court;~~
 - ~~3. read and is familiar with the Federal Rules of Appellate Procedure (F.R.A.P.) and the local rules of this court.; and~~
 - ~~4. in lieu of each one of the three arguments required by (1) supra, argued two motion of substantive nature in which briefs or memoranda of law are submitted in State Courts, Federal Courts or before administrative tribunals.~~

IT IS SO ORDERED.

FOR THE COURT.

(s) Roseann B. MacKechnie
Clerk of Court

Date: November 16, 2004